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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,
Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,
Defendant.

**RESPONSE TO BLENDJET'S
REQUEST TO SUBMIT FOR
DECISION (ECF 72)**

Civil No. 2:21-cv-00668-TC-DBP
Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Plaintiff Blendtec, Inc. hereby responds to Defendant Blendjet Inc.'s ("Blendjet") request to submit for decision filed on February 10, 2023 (ECF 72) regarding the pending motions to quash, which are fully briefed. As Blendjet knows, at least five (5) of the third parties have served objections to Blendjet's subpoenas.¹ Accordingly, the motions to quash filed by Blendtec are not

¹ See **Exhibit 1** (Blendid's Objections); **Exhibit 2** (Dorsey & Whitney LLP's Objections); **Exhibit 3** (Holland & Hart LLP's Objections); **Exhibit 4** (Brigham Young University's Objections); **Exhibit 5** (Enlisted Design's Objections).

ripe for adjudication, because the third parties' objections render the subpoenas "unenforceable and there is nothing to quash." *Bays Exploration, Inc. v. Pensa, Inc.*, 2009 U.S. Dist. LEXIS 138721, at *11 (W.D. Okla. 2009) ("because nonparty BOSC has filed a written objection to the subpoena it need not comply and will remain excused from compliance until there is an order directing it to produce one or more of the requested documents").

Turning to discovery between the parties in this dispute, two motions to compel filed by Blendtec are fully briefed and ripe for resolution by the Court (identified below). On February 10, 2023, Blendtec filed three additional Motions to compel (identified below). Blendjet's responses to these recently filed motions are due Friday, February 17, 2023.

The current fact discovery cutoff is March 31, 2023. Blendtec issued a number of deposition notices on February 7, 2023, for depositions to take place in mid-March. Blendtec expects complete document production by Blendjet before that time. However, at the time Blendtec filed its Motions to Compel last Friday, February 10, 2023, Blendjet had produced *just three emails* from individual ESI Custodians despite the fact that Blendtec served ESI discovery requests on Blendjet on November 7, 2022, and despite the fact that on December 19, 2022, Blendjet disclosed nearly *44,000 search term hits* (unique deduped families) for its individual ESI custodians.²

Blendtec believes that a hearing on the foregoing pending discovery issues is the most efficient way for the Court to address and resolve the parties' disputes so the parties may move forward to complete discovery expeditiously. Accordingly, Blendtec respectfully asks the Court

²² Blendjet produced documents long after business hours last Friday night and Blendtec has not yet reviewed those newly produced documents.

to schedule an expedited hearing to address the issues raised in the following pending motions:

1. ECF 50: Motion to compel Blendjet to respond to Blendtec's June 22, 2022 discovery requests (fully briefed on January 6, 2023);
2. ECF 53: Motion related to scope of email discovery (fully briefed on January 6, 2023);
3. ECF 66: Motion to compel Blendjet to produce documents responsive to RFP 32 (will be fully briefed on February 17, 2023);
4. ECF 67: Motion to compel Blendjet to produce documents responsive to RFP 34 (will be fully briefed on February 17, 2023);
5. ECF 68: Motion to compel Blendjet to produce documents responsive to RFPs 31, 33, 35, 36, and 37 (will be fully briefed on February 17, 2023).

Respectfully Submitted this 14th day of
February 2023,

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

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